IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

CRL.A.No. 791 of 2003()

CC.144/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V,
(SPECIAL COURT FOR MARK LIST CASES) TRIVANDRUM

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APPELLANT: COMPLAINANT

P.PRAMOD, T.C. NO. 43/431, THAIKOOTTAM,
MANACAUD P.O., THIRUVANANTHAPURAM

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENTS: ACCUSED AND STATE

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1. SMT. VASANTHAKUMARI P.K.,
C/O. JAYAKUMAR, KONNATHU, PAPPANAMKODE P.O.,
THIRUVANANTHAPURAM.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.RAJASEKHARAN NAIR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

Crl.A.791/2003 (B)

Dated this the 9th day of February, 2007

JUDGMENT

The counsel as well as the complainant were absent before the Court below, when the complaint, preferred under Section 138 of the Negotiable Instruments Act, in short 'the Act', was taken up. Therefore, the accused was acquitted. After obtaining special leave, the complainant had filed this appeal.

2. The only ground urged by the learned counsel for the appellant is that the clerk of the advocate had noted the date wrongly and, therefore, neither the counsel nor the complainant could be present on the appointed date.

3. After considering the materials on record, I am of the opinion that an opportunity be given to both the parties to establish their contentions, on adducing evidence. To enable the same, I am inclined to set aside the impugned order.

4. In view of the above facts situation, I set aside the impugned order dated 13.2.2003 and restore C.C.No.144/2002 to the file of the Judicial Magistrate of First Class-V (Special Court for Mark list Cases), Thiruvananthapuram. The learned Magistrate is directed to dispose of the same, within three months from the date of appearance of the parties.

5. The parties shall appear before the Court below on 14.3.2007.

The appeal is allowed as above.

J.M.JAMES
JUDGE

mrcs